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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/789,485	02/27/2004	Thilo Stolze	5497-015	7994
57579 7590 06/10/2009 COATS & BENNETT/INFINEON TECHNOLOGIES 1400 CRESCENT GREEN SUITE 300 CARY, NC 27518				
EXAMINER				
ARENA, ANDREW OWENS				
ART UNIT		PAPER NUMBER		
2811				
MAIL DATE		DELIVERY MODE		
06/10/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

**Advisory Action
Before the Filing of an Appeal Brief**

Application No.

10/789,485

Applicant(s)

STOLZE, THILO

Examiner

Andrew O. Arena

Art Unit

2811

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 11 May 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires _____ months from the mailing date of the final rejection.
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.
Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

NOTICE OF APPEAL

2. ☐ The Notice of Appeal was filed on _____. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

AMENDMENTS

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);
(b) ☐ They raise the issue of new matter (see NOTE below);
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).
5. ☐ Applicant's reply has overcome the following rejection(s): _____.
6. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☒ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.
The status of the claim(s) is (or will be) as follows:
Claim(s) allowed: none.
Claim(s) objected to: none.
Claim(s) rejected: 1,3-5,8,9,11,13,14,17 and 18.
Claim(s) withdrawn from consideration: none.

AFFIDAVIT OR OTHER EVIDENCE

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

REQUEST FOR RECONSIDERATION/OTHER

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:
See Continuation Sheet.
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). _____
13. ☐ Other: _____.

/Lynne A. Gurley/
Supervisory Patent Examiner, Art Unit 2811

/Andrew O. Arena/
Examiner, Art Unit 2811
4 June 2009

Continuation of 11. does NOT place the application in condition for allowance because: the arguments are not persuasive. The apparatus claims do not structurally distinguish from the apparatus disclosed in Ali, per MPEP, e.g., § 2114.

As a preliminary note, limitations from the specification are not read into the claims. See MPEP § 2111.01(II).

As for the argued "articulated hinge", "deformation" and "angles", note that all structure recited in the claims is present in Ali, and further, that adjacent substrate regions (60, 62) contact separate connecting elements (20) so as to be substantially isolated from one another. Therefore, even though the functional language "prevent a deformation" does not structurally distinguish, it does not even seem to functionally distinguish in that a deformation of 60 in Ali would likely be isolated from causing a deformation in the substrate 62. Again, the argued angles are not recited in the claims and are not read into the claims.

Ali connecting elements can each be called an "articulated hinge", each contain all structure implied thereby, and furthermore, each is capable of performing the recited functions.

As for the argued "elastic" excluding Ali's socket, the rejection points out that the socket is indeed elastic at least to the extent required to engage and accept the substrate regions. Ali states "the socket 20 may be adapted to receive one electronic device" (col 2 ln 21-23).

As for the argued lack of evidence, it must be noted that an apparatus claim must be distinguished in terms of structure not function. See MPEP § 2114. It would seem that evidence must be provided that Ali possesses all structure implied by the recited function, but that no evidence necessarily needs to be presented that the claimed prevention is actually exhibited. Nevertheless, each substrate region is isolated from an adjacent one and a deformation is prevented at least to the extent as in the presently claimed invention. One might simply compare the region between substrates in Fig 1 of the present application to Fig 4 of Ali.

The claims remain rejected as presented in the Office Action dated 4/2/2009.

/Andrew O. Arena/
4 June 2009